vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4766 OF 2005

Ramesh Bhajanlal Arora ... Petitioner

V/s.

Ajay Garg & Ors. ... Respondents

Mr.C.J. Sawant i/b Nitin Dhumal for Petitioner
Mr.Verma i/b Mayur Narendra & Co. for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 28, 2005**

P.C.:

. This Petition challenges the order of the trial Court dismissing the interim notice taken out for being added as a party-defendant in the suit. The Petitioner claims to be in possession of the suit premises. He claims that he was inducted in the suit premises by one late Hormusji who was the original tenant. According to the Petitioner, he was in exclusive possession of a part of the suit premises with an independent entrance. He paid a consideration of Rs.1,000/- per month to the original tenant. The Petitioner contended in his application that since he was in use and occupation of the suit premises from 28.5.1972 by paying monthly compensation of Rs.1000/-, which was subsequently increased to Rs.1,500/-, he was a lawful subtenant. Despite this, the Petitioner was not made a party to the

suit filed by the respondents against the legal heirs and representatives of the original tenant after she expired on 24.7.1995. The Petitioner contends that he had informed the respondents that he was in possession of the suit premises through his solicitor's letter dated 12.12.1995 itself.

2. The plaintiffs i.e., the respondents herein, resisted the application by contending that the Petitioner was not in exclusive possession of the suit premises and was, therefore, not entitled to be joined as a party-defendant in R.A.E. Suit No.1212/1930 of 2003.

3. The trial Court, on a consideration of the judgments cited at the bar, has held that the Petitioner is not entitled to be added as a party-defendant. According to the trial Court, the plaintiffs having not recognised the Petitioner as a subtenant, he could not claim as a matter of right that he be added as a party-defendant. The plaintiffs could not be compelled according to the trial Court to add the Petitioner as a party-defendant since it was necessary for him to prove his right, title and interest in respect of the suit premises independently. The interim notice, therefore, was discharged.

4. Heard advocates. There is no dispute that the Petitioner was in occupation of the suit premises. However, whether his occupation or possession was exclusive or not would be a matter which the trial Court would decide only after impleading the Petitioner as party defendant to the suit.Being in possession of the suit premises, it was necessary that the trial Court ought to have allowed the interim notice since the Petitioner is certainly a necessary party. The object of the application made by the Petitioner is to avoid multiplicity of proceedings. Reliance placed by the learned Counsel for the Petitioner on the judgment in the case of *Dr.Anant Kumar Karmakar v/s. Kanchanben Niranjan & others,* **1990 Bom.R.C. 339** is apt. It has been held that in order to do complete justice in a matter, it is necessary that all parties who are concerned should be before the Court.

5. It appears that the trial Court was labouring under the impression that by adding the Petitioner as a party to the suit, it would mean that the Petitioner was recognised as a lawful tenant of the premises. In my view, by adding the Petitioner as a party-defendant would not in any manner create any rights in favour of the respondent unless he has established on evidence

that he was a lawful sub-tenant of a part of the suit premises.

6. In the circumstances, Petition allowed. Interim notice No.1812 of 2004 is also allowed. The Petitioner shall be added as a party defendant to the suit. The plaintiffs shall carry out the necessary amendments within four weeks from today.